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OSTENSIBLE PARTNERSHIPS. — Suppose that A and B hold themselves out as partners, but that as a matter of fact there is no partnership, and A is actually owner of all the property used in the business. What are the respective rights of attaching firm and separate creditors? If A hold B out as the ostensible owner of goods, it is held that a creditor of B who attaches the goods is preferred to a subsequently attaching creditor of A, and, conversely, a creditor of A who attaches the goods gets priority over a subsequently attaching creditor of B. As Cooper, C., remarks in *Hillman* v. *Moore*, 3 Tenn. Ch. 454, "It is a race of diligence, and he who is first in time is first in right." If this rule applies where A holds B out as ostensible owner, why should it not apply where A holds out B and himself, under the guise of a partnership, as ostensible owners? If it be true that in such a case the first attaching creditor, whether he be creditor of the ostensible firm or of the actual owner, is preferred, then it follows that, as the two sets of creditors have equal rights against the property used in the business of the ostensible firm, both sets would come in *pari passu* on this property in case of the bankruptcy of the true owners; for bankruptcy or an assignment in insolvency operates as an attachment of the bankrupt's property for the benefit of his creditors. To hold that, on the bankruptcy of the actual owner, the creditors of the ostensible firm are entitled to preference in respect to the ostensible firm property on the ground that the actual owner is estopped to deny that such property is firm assets, works out justice as between the firm creditors and the true owners, but entirely disregards the rights of the separate creditors. Thesiger, L. J., says in *Ex parte Hayman*, L. R. 8 Ch. D. 11: "The law relating to ostensible partnerships is founded on the doctrine of estoppel, and though the doctrine of estoppel might be perfectly good as between those who contract with the joint creditors and the joint creditors themselves, I do not see why in the event of bankruptcy the estoppel should apply to the separate creditors whose rights before bankruptcy stand very much in the same position as those of joint creditors," — *i. e.* before bankruptcy they could seize property used in the business as separate property of the actual owners, and joint creditors could seize the

same property in an action against the ostensible partners. The actual decision in *Ex parte Hayman* was that the creditors of the ostensible firm, on the bankruptcy of its members, should be preferred as to the property used in the business to the separate creditors of the actual owner; but the decision is placed squarely on the statutory doctrine of "reputed ownership." Those cases in this country which reach the same result (*Kelly* v. *Scott*, 49 N. Y. 595; *Thayer* v. *Humphrey*, 64 N. W. Rep. 1007 [Wis.]) are not to be justified on statutory grounds, and are therefore open to criticism. The recent case of *Broadway National Bank* v. *Wood*, 43 N. E. Rep. 100 (Mass.), correctly holds that, on the insolvency of the true owner of property used in the business of an ostensible firm, the firm creditors are not entitled to any preference. If, however, the court means to imply that firm creditors, even by a prior attachment of this property, could get no priority, it appears to run counter to a previous Massachusetts decision (*Lord* v. *Baldwin*, 6 Pick. 348), where an attaching creditor of the ostensible owner was preferred to a subsequently attaching creditor of the true owner.

Other authorities for the view that, in the case of an ostensible partnership, a prior attaching creditor, whether joint or separate, gets a preference over a subsequently attaching creditor, are *Hillman* v. *Moore*, *supra*; *York County Bank's Appeal*, 32 Pa. St. 446; *Grabenheimer* v. *Rindskobb Bros.*, 64 Texas, 49; (but see *Baylor County* v. *Craig*, 69 Texas, 330). In *Van Kleeck* v. *McCabe*, 87 Mich. 599, where the creditors of the ostensible firm were given preference as to the ostensible firm assets, it is not clear whether the attachment by firm creditors preceded the assignment for benefit of creditors, made by the actual owner.

EXTRA-JUDICIAL OPINIONS. — "Each branch of the legislature, as well as the Governor and Council, shall have authority to require the opinions of the justices of the Supreme Judicial Court upon important questions of law, and upon solemn occasions. This provision was inserted in the Constitution of Massachusetts in 1780, and has been since embodied in substantially the same terms in the Constitutions of Maine, New Hampshire, Rhode Island, Florida, Colorado, and South Dakota.

The courts have interpreted these provisions as intended to secure to the executive and the legislature a reliable source of legal advice, and, with two exceptions (see 70 Me. 583; 12 Col. 466), have universally held that opinions given in accordance with them were purely advisory, and binding neither as decisions nor as precedents. Such opinions, however, place a court in a difficult position, and have been given only with extreme reluctance (see 63 Mass. 604). The opinion must be given without a hearing of the parties, and without the assistance of the research and argument of counsel. Admitting that it is purely advisory, it is an official act, and can hardly fail to be prejudicial to parties adversely interested, and to influence the officials of lower tribunals, as well as to bias the subsequent opinions of the judges themselves if the question comes up for actual decision. Perhaps the most cogent objection to her practice is that it gives the other departments of the government authority to impose upon the judiciary duties not within the scope of their jurisdiction. On this ground a Minnesota statute authorizing advisory opinions was held unconstitutional (10 Minn. 78).

Where the requirement is embodied in the Constitution, however, it